



STATE OF DELAWARE

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December 20, 2016

STAFF MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Toni Loper, Public Utility Analyst II 

SUBJECT: IN THE MATTER OF THE JOINT APPLICATION OF BUSINESS TELECOM, LLC, CTC COMMUNICATIONS CORP., DELTACOM, LLC, EARTHLINK HOLDINGS CORP. AND WINDSTREAM HOLDINGS, INC. FOR APPROVAL TO TRANSFER CONTROL OF AUTHORIZED TELECOMMUNICATIONS PROVIDERS (FILED NOVEMBER 28, 2016) PSC DOCKET NO. 16-1082

Application:

On November 28, 2016, pursuant to 26 Del. C. § 215, Business Telecom, LLC ("BT"), CTC Communications Corp. ("CTC"), DeltaCom, LLC ("DeltaCom"), EarthLink Business, LLC ("EarthLink Business"), (collectively, "EarthLink Licensees"), EarthLink Holdings Corp. ("EarthLink Parent"), and Windstream Holdings, Inc. ("Windstream Parent") (collectively, "Applicants") filed an application (the "Applications") with the Delaware Public Service Commission ("Commission" or "PSC") seeking authorization to complete a transaction whereby Windstream Parent will acquire indirect control of EarthLink Licensees. In addition, the Applicants request the authority for EarthLink Business to transfer its equity interests in the other EarthLink Licensees to a to-be-formed intermediate holding company (the "Pro Forma Change").

Applicants:

Windstream

Windstream Parent is a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, AK, 72212. It functions as a holding company and does not provide telecommunications services or hold any licenses. Windstream Parent, as asserted in the Application, owns and operates a number of licensed telecommunications providers in all states, including Delaware.¹

¹The following is a list of Windstream subsidiaries authorized in Delaware and the Docket No., Order No. and date each companies' authority was granted; PAETEC Communications, LLC PSC, Docket Nos. 98-336, Order No. 4914 (February 3, 1998). McLeod USA Telecommunications, LLC, PSC Docket No. 93-30, Order No. 4418 (February, 18, 1997), Windstream Communications, LLC, PSC Docket No. 13-278, Order No. 8454 (September 22, 2013), Windstream KDL, LLC, PSC Docket No. 13-278, Order No. 7758 (April 20, 2010), Cavalier Telephone Mid-Atlantic, LLC, PSC

EarthLink Companies

EarthLink Parent is a Delaware corporation with principal offices located at 1170 Peachtree Street, Suite 900, Atlanta, GA 30309. EarthLink Parent is a holding company and does not provide telecommunications services, nor does it hold any telecommunications licenses. EarthLink Parent, with its subsidiaries² (collectively “EarthLink”) provides a broad range of data, voice and managed network services to business customers in the United States, including a network of more than 29,000 route fiber miles and 90 metro fiber rings.

Transaction:

On November 5, 2016, by Windstream Parent, Europa Merger Sub, Inc. (“Merger Sub 1”)³, and Europa Merger, Sub, LLC (“Merger Sub 2”)⁴, whereby Merger Sub 1 will be merged with and into EarthLink Parent (the “Initial Merger”) with EarthLink Parent continuing as the surviving corporation (the “Surviving Corporation”), and immediately following the Initial Merger the Surviving Corporation will be merged with and into Merger Sub 2 (the “Subsequent Merger” and, together with the Initial Merger, the “Earthlink Transaction”), with Merger Sub 2 continuing as the surviving company known as EarthLink Holdings, LLC (the “Surviving Company”) an indirect, wholly-owned subsidiary of Windstream Parent. As a part of the EarthLink Transaction, EarthLink Parent Stock will be exchanged for Windstream Parent Stock. This will result in Windstream Parent becoming the ultimate parent company of EarthLink Licensees, to include BT, CTC, and DeltaCom. This change of control does not involve a transfer of operating authority, assets or customers. In addition, the Applicants request authority for EarthLink Business to transfer its equity interests in the other EarthLink Licensees to a to-be-formed subsidiary company.⁵

The purpose of this docket is for authorization to: a) merge EarthLink Holdings, Corp. into Merger Sub 1, with EarthLink Holdings Corp. surviving, b) merge EarthLink Holdings Corp. into Merger Sub 2, with Merger Sub 2 surviving, and c) the Pro Forma Change whereby EarthLink Business, LLC transfers its ownership interests in the other EarthLink Licensees to a new, yet-to-be formed holding company.

Docket No. 01-219, Order No. 5768 (July 24, 2001), Intellifiber Networks, LLC, PSC Docket Nos. 03-41 and 10-113, Order Nos. 6131 and 7766 (April, 1, 2003 and May 4, 2010), Talk America, LLC, PSC Docket No. 92-35, Order No. 3438 (July 7, 1992), USLEC of Pennsylvania, LLC, PSC Docket No. 99-108, Order No. 5179 (July 27, 1999).

² EarthLink Business, LLC received authority to provide telecommunications services in Delaware in PSC Docket No. 99-479, Order No. 5324 (January 11, 2000). DeltaCom, LLC received authority in PSC Docket No. 96-287, Order No. 4405 (February 4, 1997), Business Telecom, LLC received authority in PSC Docket Nos. 95-149 and 98-168, Order Nos. 4072 (November 7, 1995) and 4983 (April 17, 1998)

³ Europa Merger Sub, Inc. is an indirect wholly owned subsidiary of Windstream Services, LLC.

⁴ Europa Merger, Sub, LLC is an indirect, wholly-owned subsidiary of Windstream Services, LLC.

⁵ The Applicants will notify the Commission of the final structure, including the identity and corporate form of the subsidiary company, with their consummation notice following closing of the EarthLink Transaction.

Public Interest:

The Applicants assert that the public interest will be served. The transactions will enable the Applicants to continue to offer a broad range of services, provide economies of scale which will improve the combined enterprise's economic position, and which allows the Applicants to access debt at more favorable terms and conditions. In addition, it will allow EarthLink Licensee's to grow and compete better in the highly competitive Delaware market. The Applicants assert that these transactions will yield both financial and operational benefits that will benefit Delaware customers, and will not result in a change in day-to-day operations. Furthermore, the transaction is expected to be transparent to customers, and is not expected to affect current operations of the Applicants, nor adversely affect competition for telecommunications service in Delaware. In addition, the Applicants have shown that the transactions are for proper purpose, and are seeking the approvals of the regulatory authorities which are necessary for the transactions to demonstrate that they are in accordance with the law.

Staff Recommendation:

Applications seeking transfer of control by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 *Del. C.* §215 because the companies are deemed to be public utilities. The Applicants have represented that the proposed transactions are in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by statutory approval without Commission action. The result seems appropriate under the circumstances. Staff, therefore, recommends that the Commission not act on this application. Under 26 *Del. C.* §215(a)(1) and (a)(3), the effect will be that the application is deemed to be approved by the Commission. Staff will also acquire verification from the Applicant that the proposed transaction and financing arrangements have been completed.